SUPPIAH PAKRIASAMY

v.

MAJLIS PEGUAM MALAYSIA

HIGH COURT MALAYA, JOHOR BAHRU
ABD HALIM AMAN J
[ORIGINATING SUMMONS NO: 24M-222-2010]
16 FEBRUARY 2011

LEGAL PROFESSION: *Bar Council - Council meeting - Resolutions thereof - Whether confidential in nature - Whether may not be divulged if adverse to Council's interest - Section 76(3) Legal Profession Act 1976 - Effect - Whether superseding principle in Majlis Peguam Malaysia & Ors v. Raja Segaran Krishnan & Other Appeals*

By his originating summons herein, the plaintiff, a former council member of the defendant and the former Chairman of the Johore Bar Committee, applied for the supply to him of certain minutes of the defendant's Council Meetings as convened between 19 March 2005 and 16 May 2009. By letter dated 25 August 2010, the defendant supplied the minutes sought for, but not after its President had vetted through same and approved the disclosure. It was further apparent that some parts of the minutes, particularly those pertaining to the discussion on a civil suit which the plaintiff had earlier filed against the defendant, had not been divulged to the plaintiff. It was the defendant's stand that such information was strictly confidential and ought not to be made privy to the plaintiff. The plaintiff, however, took offence to the non-disclosure of these minutes, and in the circumstances filed the present application for an order that the defendant do also deliver the minutes to him. The defendant argued that the originating summons ought to be dismissed as the relief sought for was in the nature of a "mandatory injunction". It was further argued that the obliterated minutes were confidential in nature, and that the defendant was entitled not to reveal same, considering that s. 76(3) of the Legal Profession Act 1976 had superseded the principle as founded in *Majlis Peguam Malaysia & Ors v. Raja Segaran Krishnan & Other Appeals*.

Held (dismissing plaintiff's application):

(1) The major part of what was being requested by the plaintiff had been furnished by the defendant. In fact, the gist of the request, particularly the minutes for the relevant years, had been sent by the defendant to the plaintiff and this is something which the plaintiff should be thankful for. (para 6)

(2) Anyone who is a party to a suit deserves every right not to reveal details of that which would clearly jeopardize his pending suit. In this case, the defendant, as the opponent to the suit involving both the plaintiff and the defendant, is entitled, as a matter of principle, to preserve as being confidential, the matters and issues that were being discussed in the meetings of the Bar Council which were relevant to the pending litigation. (para 6)

(3) By amending Act A1269, which incorporated s. 76(3) into the Legal Profession Act 1976, and which came into force on 2 October 2006, proceedings or matters of the Board, the Bar Council, the State Bar Committee are to be considered secret and confidential. Meetings of the Bar Council are a proceeding under the Act. Hence, they are secret and confidential. It is also to be noted that with the coming into force of s. 76(3), the principle as enunciated in *Raja Segaran*'s case is no longer relevant. (para 6)

Case(s) referred to:
Majlis Peguam Malaysia & Ors v. Raja Segaran Krishnan & Other Appeals [2004] 4 CLJ 239 CA ***(refd)***

Legislation referred to:
Legal Profession Act 1976, s. 76(3)

For the plaintiff - P Suppiah (En Azmi with him); M/s Abdul Rahman Saad & Assocs
For the defendant - En Shawn; M/s Lee Hishammuddin Allen & Gledhill

Reported by Wan Sharif Wan Ahmad

JUDGMENT

Abd Halim Aman J:

[1] *Vide* an originating summons dated 16 December 2010 (encl. (2)), the plaintiff, a legal practitioner practicing since 1973, is seeking the following declarations from the defendant, namely:

a. That the defendant do supply the plaintiff copies of the Minutes of Bar Council Meetings set out hereunder:

i. The page containing Item 4 of the 1st Meeting of the Bar Council held on 19 March 2005.

ii. The page containing Item 1 of the 8th Meeting of the Bar Council held on 22 October 2005.

iii. The page containing Item 4 of the 1st Meeting of the Bar Council held on 18 March 2006.

iv. The page containing Item 1.4 of the 1st Meeting of the Bar Council held on 17 March 2007.

v. The page containing Item 1.4 of the 1st Meeting of the Bar Council held on 15 March 2008.

vi. The page containing Item 16.2 (pp. 33 and 34) of the 12th Meeting of the Bar Council held on 7 February 2009.

vii. The page containing Item 1.4 (p. 2) of the 1st Meeting of the Bar Council held on 14 March 2009.

viii. The page containing Item B7 (p. 38) of the 2nd Meeting of the Bar Council held on 11 April 2009.

ix. The page containing Item 2.51 (p. 17) of the 3rd Meeting of the Bar Council held on 16 May 2009.

b. Such further or other kinds of relief.

c. Liberty to apply.

d. Costs (not asking)

[2] The application is being supported by a sworn affidavit filed by the plaintiff himself – (encl. (4)). In opposing such application, a sworn affidavit by George Varughese a/l K O Varughese (encl. (13)) was duly filed. Bundles of Authorities were being filed too. In his affidavit, the plaintiff avers that by a letter dated 8 June 2010 addressed to the Secretary of the defendant, (exh. 'PS1') he requested for past minutes including correspondences for the years 2005 to 2010 to be produced to him. A reminder was sent on 5 July 2010 (exh. 'PS2'). A reply for his request was duly received

by him whereby it was noted that the minutes were being compiled and would be sent after they have been "vetted by the President to exclude discussion on matters where you were a party." (exh. 'PS3').

[3] A response was sent to the defendant (exh. 'PS4') stating that the President should not be vetting the minutes. Minutes were then sent to him *vide* a letter dated 25 August 2010 (exh. 'PS5'). However, the minutes that he received contained some portions which had been obliterated. Not being satisfied, another letter was sent, dated 1 September 2010 (exh. 'PS6'), indicating his right to be furnished with unobliterated minutes. A reminder was also sent on 1 November 2010 (exh. 'PS7').

[4] Since no response was received, he put forward a motion before the Council Meeting on 20 November 2010 (exh. 'PS8' being the letter dated 11 November 2010 containing the said motion). However, the said motion was postponed to the next Council Meeting to be held on 4 December 2010 where at that time, he was told he was no longer recognized as the Chairman of the Johore Bar and therefore ceased to be a Council Member. Hence this application was duly filed. During submission, the plaintiff stressed that the defendant did not challenge his right to the minutes, since the minutes were duly furnished to him. However, his main contention is, the defendant, in particular the President, had no power to vet such minutes. He stressed:

> The stand taken by the President is – no Council Member is entitled to look at the past minutes. If they want to do so, the President need to vet. Who gave him the power? He has no power of vetting any of the minutes.

[5] In his affidavit in opposition, the Secretary to the defendant admitted that the so-called minutes of meeting per requested by the plaintiff were duly sent to the plaintiff on 25 August 2010. However, he averred that only a small portion of the minutes were being obliterated. That obliterated portion contained the so-called secret discussion involving the plaintiff, where the plaintiff was directly involved, being the opponent in a suit against the Bar Council. He stressed further that the plaintiff was not a Council Member during those period (2005 to 2009). Even as a Council Member, he would not be allowed to attend such meetings

whereby matters involving himself are being discussed. During submission, counsel for the defendant argued on three issues. Firstly, that this originating summons ought to be rejected on the basis that the relief sought as stated in the originating summons was for declarations, whereby no cause of action is needed. However, the nature of the relief sought was 'mandatory injunction in nature', since the effect of the application was that the defendant ought to provide him with such minutes. Secondly, that the obliterated minutes were said to be confidential in nature since the discussions involved the plaintiff directly and the plaintiff was a counter party in a suit involving the defendant. And thirdly, that s. 76(3) of the Legal Profession Act 1976 had superceded the principle as founded in *Raja Segaran*'s case.

Court's Finding

[6] The originating summons filed by the plaintiff *vide* encl. (2) had been perused through. The affidavits filed, together with the exhibits attached, had been duly considered. The submissions, together with the authorities cited, had also been given due consideration. The statutes referred to had likewise been analysed. Having considered all these, I hereby rule that the plaintiff's application *vide* encl. (2) ought to be dismissed. The reasons in arriving at such ruling are as follows:

a. The major part of what was being requested by the plaintiff had been complied and furnished by the defendant. In fact the gist of the request, in particular the minutes for the relevant years, had been sent by the defendant to the plaintiff.

b. What was being classified as 'confidential' and something not to be revealed, ought to remain in confidentiality.

c. The issue of whether the President (defendant) do possess power to vet the minutes, did not arise at all and questions to that effect were not relevant here.

d. Obviously, being the opponent to the suit involving both the plaintiff and the defendant, the matters and issues that were being discussed and relevant to the pending litigation ought to be preserved as being confidential, on matter of principle.

e. Anybody who is a party to the suit deserves every right not to reveal every detail or details that would clearly jeopardise his pending suits. The same situation applies to the defendant and plaintiff here.

f. On the issue of secrecy, s. 76 (3) of the Legal Profession Act 1976 (Act 166) was amended *vide* Act A1269, which came into force on 2nd October 2006. *Vide* such amendment, any proceedings or matters of the Board, the Bar Council, the State Bar Committee, the Disciplinary Board and the Disciplinary Committee are to be considered as being secret and confidential. Meetings of the Bar Council is a proceeding under the Act. Hence, it is secret and confidential.

g. The plaintiff should be thankful that his request to the defendant had been given due accord.

h. With the coming into force of s. 76(3) of Act 166, the principle as enunciated under the case of *Majlis Peguam Malaysia & Ors. v. Raja Segaran Krishnan & Other Appeals* [2004] 4 CLJ 239, is no longer relevant.

i. As to the defendant's first contention with regard to procedures, it has since been rendered academic.

[7] In conclusion, the originating summons filed by the plaintiff here is of no basis. It ought to be dismissed with no order as to cost.